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In the Matter of)	
)	
Adjustment of the Rates for)	Docket No. 96-6
Noncommercial Educational)	CARP NCBRA
Broadcasting Compulsory License)	

THE PUBLIC BROADCASTERS' REPLY IN FURTHER SUPPORT OF
THEIR MOTION TO STRIKE THE TESTIMONY OF HORACE ANDERSON
AND TO STRIKE ASCAP'S EXHIBITS 721, 310, 311, 700 AND 701

The Public Broadcasting Service ("PBS") and National Public Radio ("NPR"), in conjunction with the Corporation for Public Broadcasting ("CPB") (collectively, the "Public Broadcasters"), submit this memorandum in further support of their motion to strike the testimony of Horace Anderson and ASCAP's exhibits 721, 310, 311, 700 and 701.

1. ASCAP does not challenge the Public Broadcasters' assertions that Horace Anderson is not competent to testify regarding public and commercial broadcasting job categories and that, in creating Exhibit 721, Mr. Anderson merely assumed that certain commercial and public broadcasting jobs are the same based on their job titles. ASCAP asserts instead that the four salary reports upon which Mr. Anderson relied in creating Exhibit 721 would be "meaningless" if the job categories listed in them were not the same. ASCAP misses the point completely. The

Public Broadcasters do not dispute that the job categories reflected within the NAB reports are for roughly the same jobs at different commercial stations or that the job categories reflected within the CPB reports are for roughly the same jobs at different public stations. Rather, ASCAP has failed, and Mr. Anderson is incompetent, to establish that the jobs listed in salary reports published by two different entities for two different industries, are in fact comparable.

Moreover, ASCAP's characterization of Exhibit 721 as merely "a demonstrative exhibit" is inaccurate and misleading. Exhibit 721 does not, as ASCAP suggests, merely summarize data contained in other documents, but rather purports to compare information from different documents absent a proper foundation as to the comparability of this information. To the contrary, Exhibit 721 "merely summarizes" testimony of Mr. Anderson that he is not competent to proffer, and thus should be stricken. See, e.g., Needham v. White Labs., Inc., 639 F.2d 394, 403 (7th Cir.) (exhibit summarizing articles was inadmissible, inter alia, because author of summary had not read all summarized articles and was not competent to testify that articles said what he had claimed), cert. denied, 454 U.S. 927 (1981), on


remand to, No. 76-1101, 1986 WL 8743 (N.D. Ill. 1986),
aff'd, 847 F.2d 355 (7th Cir. 1988).¹

1. Further, since Mr. Anderson is not competent to testify as to the significance or relevance of the data contained in Exhibits 310, 311, 700 and 701, he is not a proper sponsor of these exhibits and they should be stricken. See The Public Broadcasters' Motion to Strike Certain of the ASCAP Exhibits Sponsored by Carol Grajeda at 2; The Public Broadcasters' Reply in Further Support of Their Motion to Strike Certain of the ASCAP Exhibits Sponsored by Carol Grajeda at 1-2.

CONCLUSION

For the foregoing reasons, and the reasons reflected in their November 14 memorandum, the Public Broadcasters respectfully request that the Public Broadcasters' Motion to Strike the Testimony of Horace Anderson and to Strike ASCAP's Exhibits 721, 310, 311, 700 and 701 be granted.

Respectfully submitted,



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